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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 18th February 2015

No. 1429–IR(ID)126/2011–LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 9th December 2014 in Industrial Dispute Case No. 07 of 2012 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the M/s Insurance Employees Credit Co-operative Society Ltd., L.I.C. Building, Nuapatna, Cuttack-753001 and their workman Shri Ashok Kumar Dash was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 07 OF 2012

Dated the 9th December 2014

Present :

Shri Saoj Kumar Sahoo, O.S.J.S. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The Management of . . . First Party—Management
The Secretary, M/s Insurance Employees
Credit Co-operative Society Ltd.,
L.I.C. Building, Nuapatna, Cuttack-753 001

And

Their workman . . . Second Party—Workman
Shri Ashok Kumar Dash,
S/o Shri Gajendranath Dash,
C/o Shri K.C. Das, At Nuapada,
(Near Train Line) P.O. Nayabazar, Cuttack.

Appearances :

For the First Party–Management	.. Shri A. A. Das, Advocate and Associates.
For the Second Party–Workman	.. Shri S. K. Mishra, Advocate and Associates.

AWARD

The Government of Odisha in Labour and E.S.I. Department in exercise of powers conferred upon it by sub-section (5) of Section 12 read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act') have referred the following dispute for adjudication by this Court vide their Letter No. 2462—IR(ID)-126/11/LESI., dated the 29th March, 2012.

“Whether the action of the management of M/s Insurance Employees Credit Co-operative Society Ltd., L.I.C. Building, Nuapatna, Cuttack in dismissing Shri Ashok Kumar Dash, Assistant from services with effect from the 20th May 2006 is legal and/or justified ? If not, what relief Shri Dash is entitled to ?”

2. The case of the Second Party workman is that the First Party Management is M/s Insurance Employees Credit Co-operative Society Limited, Cuttack which has been registered under the Co-operative Societies Act. The second party was appointed as Junior Clerk on the 1st January 1991 vide Letter dated the 21st December 1990, after a regular interview. He was allotted with the work of Office Assistant vide Office Order dated the 20th October 2001. As Office Assistant, he was directed to attend the work as per the Office Order the 20th October 2001 and other works allotted to him either in writing or orally by the authorities. He was also extending the facilities of hand loan and cash adjustment to the member of the Societies whenever the President, Secretary and Directors of the Board desire. It became a regular practice which are beyond the cash transaction records of the first party management. On the 4th June 2005 surprisingly the second party was asked to submit his explanation as to some allegations brought against him. Accordingly, on the 10th June 2005, he has submitted his explanation. After submission of the said explanation he was charge sheeted on the 18th June 2005 and before expiry of the time stipulated for submission of his explanation he was placed under suspension with immediate effect on the 25th June 2005 pending drawal of disciplinary proceeding against him. On the 5th July 2005 the second party workman has submitted his explanation to the charge sheet. Pursuant to the same, a memorandum of charges was issued on the 16th July 2005 with allegations that the second party workman has committed serious irregularities and misconduct while functioning as Cashier by temporarily misrepresenting the cash of the Society, by showing irregular favour to a group of members by way of excess loan disbursement and by not sending the monthly demand advices for recovery of loan there by putting the Society at financial loss. The Second Party workman had asked for various documents from the management to enable him to file his show cause to the charge sheet but the management did not supply the same. Ultimately, on the 13th August 2005 he submitted his explanation. Since the first party management was determined to conduct a Departmental Proceeding even after submission of explanation by the Second

Party workman denying the charges, an enquiry was conducted. By Letter dated the 19th August 2005, the decision of the Board was communicated to the Second Party. The Director of the Society was appointed as Enquiring Officer and the Secretary of the Society as Presiding Officer. On the 24th August 2005 the management had issued a corrigendum to the Second Party effecting some corrections in the charge sheet dated the 11th July 2005. On the 27th August 2005 the domestic enquiry was started against the second party workman which was concluded on the 4th February 2006. No reasonable opportunity was given to the second party to defend his case during such domestic enquiry. The second party workman was not aware about the enquiry procedure and the Enquiring Officer has not explained the procedure of enquiry to the parties. During the domestic enquiry the second party had prayed to the E.O. to allow him to be represented through a Legal Practitioner or a member of the said Society which was refused. The management has not supplied the documents to the second party workman in obedience to the order passed by the E.O. on the 10th September 2005, for which the Second Party became handicapped to prove his innocence during the enquiry. The report of the Enquiring Officer is contrary to the evidence on record and perverse. A second show cause notice was issued to the second party workman on the 28th April 2006 proposing the punishment of dismissal. On the 5th May 2006 the Second Party had submitted his show cause. Without taking in to consideration the contents of the said show cause dated the 17th April 2006 the second party was dismissed from his service with effect from the 20th May 2006. Before issuance of show cause notice dated the 28th April 2006 the workman was supplied with a copy of enquiry report. Without taking into consideration the contents of the objection dated the 17th April 2006 filed by the Second Party workman the Disciplinary authority had issued the second show cause notice dated the 28th April 2006. The charges framed against the second party workman are vague. The Enquiry Officer with *mala fide* motive and ill intention prepared the enquiry report. Since there is no service rules of the management, the Second Party had preferred an appeal before the Board of Directors as per the Bye laws of the said Society, read with the provisions of the Co-operative Societies Act. The President of the Society who was the Disciplinary Authority has imposed the punishment, the Enquiring Officer who was one of the Director of the Board and the Secretary of the Society who was the Presenting Officer of the enquiry participated in the meeting of the Board of Directors of the Society to consider the appeal preferred by the second party and finally the appeal was rejected on the 31st July 2006. The Enquiring Officer has not followed the principle of natural justice and fair play during the domestic enquiry conducted against the second party. The charges levelled against the second party were not proved beyond reasonable doubt. The Disciplinary Authority did not take into consideration the past clean service record of the second party and imposed the punishment of dismissal which is not correct/proportionate. With a *bona fide* impression the Second Party workman had challenged the dismissal order before the Co-operative Tribunal, Odisha, Bhubaneswar in Service Dispute Case No. 10 of 2006 which was dismissed on the ground of maintainability. Finding no other way, the Second Party had raised an industrial dispute before D.L.O., Cuttack on the 8th November 2010. In pursuance of notice issued to the first party management by D.L.O., Cuttack the management submitted its views on the 10th January 2011. The Second Party had also filed his rejoinder on the 20th January 2011. The dispute between the parties was admitted for conciliation which could not be resolved amicably. Accordingly, D.L.O., Cuttack had submitted his report to the Government on the 31st March 2011 which was prepared by him

u/s 12 (4) of the I.D. Act, 1947. As the Government remained silent without any reference after receipt of such report the Second Party had preferred W.P.(C) No. 31849 of 2011 before the Hon'ble Court with a prayer to issue necessary direction to the Government for reference. Getting notice from the Hon'ble High Court, the appropriate Government has submitted the present reference vide its Order dated the 29th March 2012. Hence this case. The second party workman has prayed for reinstatement in service with full back wage and other consequential benefits.

3. In pursuance of notice issued by this Court the first party management entered its appearance in Court and filed written statement. The case of the first party management is that the second party was working as an Assistant in the Society of the first party management who was engaged in the Managerial job. The establishment of the first party is not an "industry". The second party was not a "workman" under the first party organisation. While the second party was serving the as an Assistant, serious irregularities were detected including misappropriation of cash. On the 4th June 2005 a letter was issued by the Secretary of the Society to the second party directing him to submit his explanation within seven days from the date of receipt of the letter relating to the misappropriation of funds. On the 10th June 2005 the second party had submitted his explanation admitting the mistake committed by him. Due to misappropriation of huge funds which was admitted by the second party he was put under suspension vide Order dated the 25th June 2005. He was also served with another show cause regarding misappropriation of cash and irregularities in loan ledger posting and loan calculation in respect of different accounts. The second party has submitted his reply on the 4th July 2005 to the show cause notice dated the 18th June 2005 and in the said show cause he admitted his mistake. On the 11th July 2005, a memorandum of charge for misappropriation of funds and irregularities in the accounts was issued to the second party. The second party has also submitted his reply on the 13th May 2005. The management decided to conduct an enquiry against the second party after the explanation submitted by the second party was not considered satisfactory. One enquiry officer was appointed by the management who has conducted the enquiry and submitted his report. Sufficient opportunity was given to the second party to defend his case during enquiry. No objection was raised by the second party against the enquiry during pendency of the same. The relevant records were produced and the witnesses were examined by the E.O. during the enquiry. The documents relied on by the management were also supplied and verified by the second party. The copy of the enquiry report was forwarded to the second party on the 3rd April 2006 and he was asked to furnish his comments on the findings of the Enquiring Officer within seven days from receipt of the said report. The second party workman asked for time to submit his comments on the enquiry report which was allowed. On the 17th April 2006, the second party submitted his comments on the enquiry report. As the comments of the second party was not satisfactory, second show cause notice was issued to the second party on the 28th April 2006 as to why he should not be dismissed from service. On the 5th May 2006 the second party also submitted his reply to the second show cause. On the 20th May 2006, order of dismissal was issued to the second party. Letters were also issued on the 26th June 2006 and the 2nd September 2006 to the second party for recovery of the amount of Rs. 1,64,538 towards the outstanding dues, as on the 31st May 2006. As the charges proved against the second party were detrimental to the interest of the Society, his continuance in the service under the Society has been dispensed with. The dismissal of the second party from service is the appropriate

punishment. Previously in an other occasion in the year 1999 the second party was also charged with defalcation of funds and other misconduct. In that occasion he had submitted his reply to the management on the 25th October 1999 where he had not admitted his mistake but undertaken to discharge his duties honestly and faithfully. The enquiry conducted by the first party management is just and fair. The second party was also given sufficient opportunity to defend his case during enquiry.

3. Taking into consideration the statement of claim filed by the second party workman and the written statement filed by the first party management, the following issues are settled :—

ISSUES

(i) “Whether the action of the management of M/s Insurance Employees Credit Co-operative Society Ltd., L.I.C. Building, Nuapatna, Cuttack in dismissing Shri Ashok Kumar Dash, Assistant from services with effect from the 20th May 2006 is legal and/or justified ?

(ii) If not, to what relief Shri Dash is entitled to ?”

4. The second party workman was examined as W.W. 1 and Exts. 1 to 24 are marked. Ext. 1 is the photo copy of the letter dated the 4th June 2005 issued to the second party by the Secretary. Ext. 2 is the photo copy of explanation dated the 10th June 2005 submitted by the second party, Ext. 3 is the photo copy of letter dated the 18th June 2005 issued to the second party by the Secretary, Ext. 4 is the photo copy of letter of suspension dated the 25th June 2005, Ext. 5 is the photo copy of the reply of the second party workman dated the 4th July 2005, Ext. 6 is the photo copy of Charge Memorandum dated the 11th/16th July 2005, Ext. 7 is the photo copy of the reply dated the 13th August 2005, Ext. 8 is the photo copy of notice of enquiry dated the 19th August 2005, Ext. 9 is the photo copy of Corrigendum dated the 24th August 2005 to the charge memorandum dated the 11th July 2005, Ext. 10 is the photo copy of representation of the second party dated the 27th August 2005 for supply of documents and engagement of co-employee for his defence., Ext. 11 is the photo copy of the order sheets of E.O. dated the 27th August 2005, Ext. 12 is the photo copy of the application of the second party dated the 10th September 2005, Ext. 13 is the photo copy of order sheet of E.O. dated the 10th September 2005, Ext. 14 is the photo copy of the depositions of the witnesses and copy of order sheets before the E.O., Ext. 15 is the photo copy of written notes of submission of the workman dated the 3rd March 2006, Ext. 16 is the photo copy of findings of E.O. dated the 27th March 2006, Ext. 17 is the photo copy of reply of the workman dated the 17th April 2006, Ext. 18 is the photo copy of show cause notice dated the 28th April 2006, Ext. 19 is the photo copy of reply of the second party dated the 5th May 2006, Ext. 20 is the photo copy of letter dated the 20th May 2006 of the management, Ext. 21 is the photo copy of Letter dated the 20th May 2006 along with the order of dismissal, Ext. 22 is the photo copy of appeal petition of the workman dated the 5th June 2006, Ext. 23 is the photo copy of the letter of the management dated the 21st July 2006 rejecting the appeal, Ext. 24 is the photo copy of the circular of the management dated the 15th March 2007.

5. On the other hand, the Secretary of the first party management is examined as M.W. 1 and Exts. A to J are marked. Ext. A is the letter dated the 4th June 2005 issued to the

second party by the Secretary of the management, Ext. B is the reply dated the 10th June 2005 of the second party, Ext. C is the letter dated the 25th June 2005 issued to the second party by the President of the Society, Ext. D is the show cause dated the 4th July 2005 of the second party submitted to the Secretary, Ext. E is the letter dated the 3rd April 2006 issued to the second party by the President-cum-Disciplinary Authority, Ext. F is the memorandum of reply dated the 17th April 2006 submitted by the second party to the President-cum-Disciplinary Authority, Ext. G is the show cause notice dated the 28th April 2006 issued to the second party by the President-cum-Disciplinary Authority, Ext. H is the reply of the second party workman to the aforesaid show cause notice, Ext. J is the Office Order dated the 20th May 2006 passed by the President-cum-Disciplinary Authority.

FINDINGS

6. *Issue No. i*—The case of the second party workman is that he was appointed as Junior Clerk with effect from the 1st January 1991 by the second party and subsequently by Order, dated the 20th October 2001 he was performing his duty as an Office Assistant. In his statement of claim he alleged that with false charges, a domestic enquiry was conducted against him in which he was not allowed to defend himself properly. It is also alleged that the domestic enquiry conducted by the E.O. is not based on evidence and his findings are perverse. The dismissal by the first party management is illegal. The appointment of the second party workman is admitted by the first party management. The case of the first party management is that due to misappropriation of cash of the Society an enquiry was conducted and after the second party was found guilty in the said enquiry he was dismissed from his service. It is also the plea of the first party management that previously in the year 1999 the second party was also involved in defalcation of the official funds, for which the first party management lost its faith on the second party. In his evidence W.W. 1 deposed that the first party management and the E.O. had not supplied the required documents to defend him properly and he was also not allowed to engage a Legal Practitioner or a member of the Society for his defence in the domestic enquiry. The Secretary of the first party management is examined as M.W. 1. He proved the documents which are marked Exts. A to J on behalf of the management. Ext. A is the notice which has been issued to the second party by the management on dated the 4th June 2005 in which he was asked to submit his explanation within a period of seven days relating to misappropriation of office cash. Ext. B is admittedly the explanation on dated the 10th June 2005 submitted by the second party, in reply to Ext. A. In the said reply the second party has admitted the allegations made against him in Ext. A but tried to explain the reasons. After submission of explanation/reply by the second party vide Ext. B on dated the 25th June 2005 the first party management put the second party under suspension vide Ext. C. Ext. D is also the show cause/explanation of the second party dated the 4th July 2005. On perusal of the same, it is also clear that the second party workman had admitted the allegations regarding non-deposit of cash collected by him in due time. Ext. F is the memorandum of reply submitted by the second party on dated the 17th April 2006 submitted to the President-cum-Disciplinary Authority. On perusal of the same, it is also clear that the second party has admitted (at paragraph two of page 4 of Ext. F) the allegations against him but tried to explain the reasons for the same.

7. In his statement of claim at Paragraph-9 the second party workman alleged that he was not allowed to take the assistance of a legal practitioner or a member of Society to defend himself in the domestic enquiry conducted by the management. On perusal Ext. 8, a

letter was issued by the Enquiring Officer to the second party on dated the 19th August 2005, it is clear that the Enquiring Officer had advised the second party to appear in the enquiry proceeding along with his defence assistant (co-employee). Ext. 11 is the Order sheet on dated the 27th August 2005 of the E.O. which shows that the request of the second party regarding engagement of an advocate was rejected but he was allowed to take assistance of a co-employee during the enquiry. It is also alleged in the statement of claim by the second party at paragraph-9 that vide Order dated the 10th September 2005 the first party management refused to supply copy of documents asked by the second party workman. Ext. 10 is the application of the second party before the E.O. dated the 27th August 2005 in which he had asked for supply of some documents as per the schedule annexed to his petition. On perusal of Ext. 11, the order sheet of the E.O. dated the 27th August 2005 of the domestic enquiry, it is clear that the documents referred against Sl. Nos. 1, 2, 3, 4 and 10 of the schedule of documents of Ext. 10 were supplied to the second party workman and the request for the supply of other documents has been rejected by the management vide Order, dated the 10th September 2005 of the E.O. It was rejected on the ground that those documents are not relevant to the domestic enquiry. Admittedly, on dated the 10th September 2005 the management supplied copy of 97 documents relied on by the management to the second party workman on dated the 10th September 2005 and the cross-examination of the management witness by second party workman was deferred to dated the 24th September 2005. Admittedly, the copy of documents relied on by the management during the domestic enquiry has been supplied to the second party workman. Some other documents which are not relied on by the management in the domestic enquiry were not supplied to the second party. So, the allegation of the second party workman that he was not provided with relevant documents by the management during domestic enquiry is not correct.

8. The second party workman has challenged the report submitted by the Enquiring Officer as perverse. Perused the enquiry report submitted by the E.O. which has been marked Ext. 16 on behalf of the second party. Ext. 14 consists of the copies of the evidence of the witnesses recorded by the E.O. and copies of some order sheet of the domestic enquiry conducted by the E.O. From the evidence of the witnesses examined by the first party management it is clear that the second party workman has committed temporary misappropriation of huge amounts of cash of the Society in which he was serving as an employee. It is also clear that after taking into consideration, the evidence on record and the documents relied on by the parties the Enquiring Officer has rightly come to a conclusion that the second party workman has committed misappropriation of the office cash and committed irregularities in maintaining different registers of the Society causing loss to the Society.

9. It is the plea of the second party that no cash box was supplied to him by the office for which he had kept the cash collected by him in different drawers for which he had forgotten to deposit the cash in time. From the evidence on record, it is clear that one Almirah was supplied to the second party workman and he was also keeping cash collected in the said Almirah. However; the plea taken by the second party workman that due to absence of cash box there was delay in deposit of cash collected is not reliable and trustworthy. In some occasions, cash of Rs. 40,000 has been deposited in the Bank after a long gap. He has also taken the plea that due to pressure of work and collection of heavy cash there was delay in deposit of cash in the Bank in time. There is no evidence on record to show that the second party had

brought it to the notice of his higher authority. Whatever it may be the second party was posted as Accountant and in charge of collection and deposit of the cash. He should have been diligent in his duty to deposit the cash collected in time which he failed. He has also taken another plea that due to absence of sub-staff the amount collected could not be deposited in time. One of the sub-staff is examined as M.W. 2 in the domestic enquiry. On perusal of his evidence it is clear that he was present in the office on which date the cash collected by the second party workman was to be deposited and in some other occasions although M.W. 2 was absent cash has been deposited in the Bank. So the plea of the second party that due to absence of sub-staff the cash collected could not be deposited in time is also not reliable and trustworthy. On perusal of Ext. 16, the copy of the enquiry report of the E.O. in the domestic enquiry conducted against the second party workman it is clear that the second party workman has committed temporary misappropriation of the cash of the Society and also due to his negligence the Society sustained loss. I do not find any reason why the report submitted by the E.O. will be termed as perverse. No doubt some new materials have been introduced during the domestic enquiry although those materials were not covered by the charge memorandum supplied to the second party. Whatever it may be there is an irresistible conclusion from the materials on record that the second party workman has committed misappropriation of cash and loss has been caused to the Society due to his negligence in duty. There was also a charge of defalcation against the second party workman and a Memo was issued to him on dated the 12th October 1999 and in obedience of such Memo he had filed an undertaking not to commit similar mistake thereafter. Being an Accountant of an establishment temporary misappropriation of official cash and negligence in maintaining the records relating to the cash is grievous in nature and dismissal is the appropriate punishment. Hence the act of the first party management terminating the service of the second party workman on dated the 20th May 2006 is legal and justified. This issue is answered accordingly.

10. *Issue No. ii*—In view of my findings under issue No. i the second party workman is not entitled to any other relief.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. SAHOO
9-12-2014
Presiding Officer
Labour Court, Bhubaneswar

S. K. SAHOO
9-12-2014
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
M. NAYAK
Under-Secretary to Government